

IN SENATE OF THE UNITED STATES,

JANUARY 27, 1826.

Mr. CLAYTON, from the Committee of Claims, to whom was referred the Memorial of James Leander Cathcart, submitted the following

REPORT :

One item of the Memorialist's demand is, for the sum of \$3,383 20. The facts on which he founds his claim are these: In 1796, the Government chartered the *Polacre Independent*, belonging to the memorialist and Mr. Ingraham, of Philadelphia, for the sum of \$6,400, to carry stores from the U. States to the Dey of Algiers. The vessel was placed under the control of Tench Francis, Agent for the U. States, and was commanded by Capt. John Robertson. On the voyage, she was captured by a Spanish cruiser and carried into Cadiz, where she was detained till, on the demand of the Dey of Algiers, she was released by the Spanish Government, at the end of about six months, and then proceeded on her voyage. While at Cadiz, Captain Robertson drew on Mr. Pickering, Secretary of State, for the sum in question, in favor of Mr. Iznardi, the American Consul at that place; and, on his arrival at Algiers, he delivered the cargo, and obtained a certificate to that effect. He received his share of the freight, and the balance was afterwards paid to Mr. Ingraham, one of the owners. The draft of Captain, on the Secretary of State, was drawn without the knowledge of the owners. It was duly honored, and, when paid, was placed to the account of the Secretary, although, perhaps, more properly chargeable to the fund appropriated for carrying into effect the Treaties with the Barbary Powers. In 1801, Mr. Pickering, being out of office, and wishing to settle his accounts, applied, through an agent, to the memorialist, then absent from the United States, requesting that he would permit the amount of Robertson's draft to be transferred to his account until the memorialist should have a final settlement with the United States, representing such transfer as a matter of form, which would enable the Secretary to settle his accounts, but which would do no injury to the memorialist. Mr. Cathcart, in 1802, assented to the transfer, at the same time declaring that he gave his assent from a spirit of accommodation, not intending, by that means, to make himself liable for the amount of the draft, which he considered a just charge against the Government. The transfer being accordingly made, Mr. Cathcart thus became a debtor to the United States in the sum of \$ 3,383 20; and on the 24th July, 1805, when he exhibited his accounts for settlement, this sum was deducted from the amount claimed

by him. In two days afterwards, however, one half of this sum was paid to him; and on the 10th of May, 1822, he received at the Treasury the remaining moiety, in pursuance of an act of Congress of that year, passed for his relief. This act contains the following proviso: "Provided, That the said James Leander Cathcart shall, previously to the payment hereby authorized, deposite with the proper officer of the Treasury Department a satisfactory release to the United States of so much as may be recovered by him, under the provisions of the eleventh article of the treaty with Spain, on account of those expenditures consequent on the capture of said brig, and his detention in Cadiz, for the discharge of which the aforesaid bill was drawn." An acquittance, in writing, but not under seal, was executed by Mr. Cathcart, before the payment of the money to him. He, at the same time, delivered a written protest, declaring his intention not to be bound by that acquittance so far as to prevent a future application to Congress for relief.

The memorialist still insists that he is justly entitled to be repaid the whole amount of this draft, because, as he alleges, the Commissioners under the Florida treaty deducted this sum from the amount of his claims against the Spanish Government; but the Committee cannot perceive that any injustice was done to Mr. Cathcart by this measure. The money had already been paid to him by the United States; and he could, therefore, have no equitable claim to receive it again from them under the treaty.

The memorialist further alleges, that while the *Independent* lay in the port of Cadiz, the Spaniards robbed her of sails, rigging, &c. which it was necessary to replace before she could venture to sea; and, as such articles could not otherwise be obtained, Captain Robertson resorted to the cargo of the *Independent*, and took from it articles to the value of \$692 60. Mr. Cathcart insists that this was a fair claim against the Spanish Government, and that, as the Dey of Algiers received the cargo without making any demand on the United States for the value of these articles, the commissioners erred in deducting this sum from the amount of his claims; and he therefore asks, that it shall now be paid him. The committee cannot discover any just ground for this demand. These articles never cost Mr. Cathcart a cent. They repaired the losses which he had sustained; and, although he had a right to call on the *Spanish* Government to make amends for the injury which he had sustained, yet, as the property which he used to repair this injury belonged to the United States, as the whole cargo did till its delivery, they have already indemnified him. The committee have no evidence that the Dey complained to this Government of any deficiency in the stores which were to be sent him, but they think that this circumstance does not affect the case, because it manifestly appears that Mr. Cathcart sustained no actual loss in the transaction; and, as between him and the United States, (and it is now a question between him and this Government,) the committee do not consider that his claim, in this particular, is well founded. Besides, they consider that some efficacy should be given

to the acquittance executed by Mr. Cathcart in 1822, notwithstanding his protest. Some means must be adopted for the final settlement of these stale demands on the Government, and to prevent the yearly exhibition of them to Congress. And no method can be better, than that prescribed by the act of 1822 for the relief of Mr. Cathcart. He has chosen to reap the benefit of that act, and he should be bound by its terms.

The Committee will subjoin a statement of so much of the award of the Commissioners under the treaty, as has reference to these two items.

“ Items of Allowance, viz :

Six months Demurrage,	-	-	-	\$3,660 00
Expenses,	-	-	-	523 37
				<hr/> 4,183 37
Deduct the sum paid by the United States,	\$3,383 20			
part of cargo taken,	-	692 60		4,075 80
				<hr/> \$107 57”

The Memorialist states, and the Committee have no doubt of the fact, that in 1785 he was captured by an Algerine cruiser and carried to Algiers, where he remained till 1796, when he was employed by the Dey as the bearer of despatches from that Regency to the Government of the United States; and that he was also charged by Mr. Barlow, the agent of the United States at Algiers, with despatches to Colonel Humphreys, the American Minister at Lisbon, and Commissioner for carrying into effect the treaties with the Barbary Powers. In this service he employed his own vessel, called the Independent, navigating her, as he alleges, at his own expense, and on his passage, which lasted more than four months, he touched at Alicant and Lisbon. For this service he claims \$ 3,200; and he admits that in 1797 and 1805, he received from the Government of the United States \$ 2,133 33, leaving a balance still due him of \$ 1,067 67, which he prays may be paid to him.

It has not been shown to the Committee that any contract was entered into between Mr. Cathcart and any agent of the Government by which he was to receive any precise sum for this service, or that there was any understanding as to the amount to be paid him, nor have the Committee been informed what other advantages Mr. Cathcart might have derived from the employment of his vessel on a voyage from Algiers via Alicant and Lisbon to Philadelphia; but they presume that at the early periods of 1797 and 1805, when the payments were made to him, the value of his services was better understood. He states that, for a voyage subsequently performed by the same vessel, direct from Philadelphia to Algiers, laden with stores, the Government paid him \$ 6,400, and that it paid to the owner of a Ragusan vessel, for carrying despatches from Tunis to the United States, the sum of

\$ 9,000; and hence he infers that the sum which has been paid him is too small, and that he ought to be allowed, at least, the sum asked for. After a lapse of thirty years it cannot be expected that much information can be gained on this part of the memorialist's claim, and if the Committee were to report any thing in his favor, it would be altogether without guide or rule. They cannot, with the information they possess on the subject, pretend to say that the sum of \$ 2,133 33 was too small a compensation for bringing despatches to this country, without knowing what other objects the memorialist had in undertaking the voyage, or what other advantages he derived from it. Those who settled his accounts, soon after the transaction, had better opportunities of judging, and it must be presumed that they allowed him what, at that time, was deemed reasonable.

The memorialist further claims "compensation for services rendered in the United States, in selecting maritime stores, and superintending the outfits of three vessels of war, built in Philadelphia for the Regency of Algiers." This claim, the Committee believe, has once been allowed and paid. The act of 15th May, 1820, passed for the relief of the memorialist, contains the following clause, viz: "five thousand six hundred dollars for twenty-eight months' service, between October, seventeen hundred and ninety-four, and July, seventeen hundred and ninety-seven, in originating and promoting the negotiation with Algiers, for the liberation of American captives, the conclusion of a treaty of peace, and the procuring, in the United States, the presents afterwards forwarded to Algiers." The latter branch of this clause evidently includes, and provides for, the service for which he now claims compensation; and for this service he received, during the period he was in America, and until he was appointed Consul at Tripoli, two hundred dollars a month.

The Committee, therefore, submit the following resolution:

Resolved, That the prayer of the memorialist ought not to be granted.